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No. 264

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

D. SPENCER GROW, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

MOTION FOR REMAND

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MOTION FOR REMAND

Petitioner, pursuant to Rule 35 of this Court, moves the Court to remand the above-entitled case to the United States Court of Appeals for the Fourth Circuit with instructions to the latter Court that it, in turn, return the case to the United States District Court for the Eastern District of Virginia for a hearing on the question of whether petitioner's conviction for mail fraud (18 U.S.C. §§ 2, 1341) resulted from a mistake of fact made by the jury.

STATEMENT

This case is presently pending before this Court on a petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit. The petition was filed July 3, 1968.

Petitioner was convicted on two counts (Counts Three and Eight of a nine-count indictment) of mail fraud in the United States District Court for the Eastern District of Virginia on December 12, 1963 (Criminal No. 7412). On appeal in the Fourth Circuit, the Court of Appeals reversed petitioner's conviction on Count Three and affirmed his conviction on Count Eight.[1]

As pertinent, the indictment alleged that petitioner dominated and controlled the business and affairs of the following savings and loan associations: Utah Savings and Loan Association, Inc., a Utah corporation; *Prudential Savings and Loan Association, Inc., an Idaho corporation;* Idaho Savings and Loan Association, Inc., an Idaho corporation; First Fidelity Savings and Loan Association, Inc., a Maryland corporation and First Guarantee Savings and Loan Association, Inc., a Maryland corporation. And further, the indictment alleged that petitioner, C. Oran Mensik and others caused the incorporation and licensing of Security Financial Insurance Corporation (SFIC) as an insurance company in the State of Maryland.[2] The al-

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[1] *United States* v. *Grow*, 394 F. 2d 182 (4th Cir. 1968), *petition for cert. filed*, 37 U.S.L. Week 3036 (U.S. July 3, 1968) (No. 264).

[2] Mensik was a defendant and was convicted on Counts Six, Seven and Eight. On appeal, his conviction was affirmed as to all counts. Defendant Henry McGurren was acquitted at the close of the government's evidence. Prior to trial, one other defendant pleaded nolo contendere and two others were severed for separate trials. The District Court directed a verdict for petitioner and Mensik on Counts One and Two of the indictment.

leged purpose for the organization of SFIC was to assure the availability of insurance for accounts in the savings and loan associations assertedly dominated and controlled by petitioner (and different associations assertedly dominated and controlled by other defendants) and to enable those associations to advertise that accounts with them were insured—by SFIC. Finally, the indictment alleged, as interpreted by the District Court, that petitioner participated in a scheme to obtain money by making false representations through the mails, i.e., petitioner sought to induce persons to invest in savings and loan associations assertedly dominated and controlled by defendants by disseminating through the mails printed matter concerning SFIC which he knew to be false.

The evidence at trial tended to show that certain brochures and other advertising matter concerning SFIC were distributed through the mails, either by SFIC or its insured associations, to potential investors. More specifically, as to Count Eight,[3] it was alleged that a letter,[4] enclosing a specimen copy of a Share-

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[3] Pertinent portions of the indictment appear at pages 53a-64a of the petition for a writ of certiorari now pending before this Court in this proceeding.

[4] Security Financial Insurance Corporation
206-208 Keyser Building, Baltimore 2, Maryland

June 19, 1961

Mr. Thomas F. O'Connell
34 Killmurray Street
Clinton, Massachusetts

Dear Mr. O'Connell:

In reply to your letter of June 16, the accounts of the Prudential Savings and Loan Association and Commercial Savings and Loan Association are insured by this company to a maxmium of

holder's Guarantee Policy of Security Financial Insurance Corporation, a financial statement of Security Financial Insurance Corporation as of December 31, 1960, and a brochure entitled "Questions & Answers about Savings Insured by Security Financial Insur-

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$20,000.00 per shareholder account. Our certified public accountant performs an annual audit on each Association we insure and in addition, we require each insured Association to submit to us a monthly report of its activities. Our examinations of the Associations in question, together with the monthly reports which they send us, indicate that their affairs are in order and we are willing to continue our insurance of their accounts.

We are enclosing for your information a specimen copy of our Shareholders Guarantee Policy, our financial statement as of December 31, 1960, and a brochure giving information regarding savings insured by Security Financial.

Very truly yours,

[Signed] ALBERT K. WOOD
Albert K. Wood
Assistant Secretary

AKW:cmb
Encls.

The foregoing letter was in response to a letter received by SFIC from Thomas F. O'Connell which is reproduced below.

34 Killmurray St.
Clinton, Mass.
June 16/61

Security Financial Ins. Corp.

Dear Sirs:

I am checking on the reliability of the *Prudential Savings and Loan Assn., 31 W. North Ave. Baltimore 1,* also the Commercial Savings and Loan Assn., 334 North Howard St. I am interested in opening an account with one or both but would like to know more about them from some other interested party.

Thanking you for any information you may be able to give me.

Your Truly

THOMAS F. O'CONNELL

(Emphasis added.)

ance Corporation," was sent to Mr. Thomas F. O'Connell, 34 Killmurray Street, Clinton, Massachusetts.

The verdict returned by the jury was as follows:

Count 3—Grow found guilty (Mensik, not guilty). The mailing was by First Fidelity Savings & Loan Association, assertedly dominated and controlled by Grow.

Count 4—Grow and Mensik found not guilty. The mailing (of an advertisement in the Baltimore Sun) was not identified as by or on behalf of an association dominated or controlled by Grow or Mensik.

Count 5—Grow and Mensik found not guilty. The mailing (by SFIC) was on behalf of Military Service Savings & Loan Association, an association not alleged to be dominated and controlled by either Grow and Mensik.

Count 6—Mensik found guilty (Grow, not guilty). The mailing (by SFIC) was on behalf of Commercial Savings & Loan Association, allegedly dominated and controlled by Mensik.

Count 7—Mensik found guilty (Grow, not guilty). The mailing was by Commercial Savings & Loan Association, allegedly dominated and controlled by Mensik.

Count 8—Grow and Mensik found guilty. The mailing (by SFIC) was on behalf of Commercial Savings & Loan Association, allegedly dominated and controlled by Mensik; *and Prudential Savings & Loan Association* [*Grow was alleged to dominate and control Prudential Savings & Loan Association (of Idaho) whereas the Count 8 mailing was on behalf of Prudential Savings & Loan Association (of Baltimore) with which Grow had no identification*].

Count 9—Grow and Mensik found not guilty. The mailing was by First Union Savings & Loan Association, not alleged to be dominated and controlled by either Grow or Mensik.

Once the jury had been discharged, this colloquy ensued:

"THE COURT [Judge Thomsen]: The Jury may now be discharged.

"This is Judge Lewis, of the District of Virginia. I have been told that in Virginia it is customary for jurors not to talk about the case even after they have been discharged.

"JUDGE LEWIS: We do not allow them to say anything about it, period.

"THE COURT: Well, the practice has been, as I told the alternates, the practice varies from District to District. This is a District of Virginia Jury, and I think the practices of the Eastern District of Virginia should be followed, as Judge Lewis has stated them, and that the Jury should not discuss the case with counsel and counsel should not discuss the case with the Jury. That is the practice in this District, and everyone has been at least admitted to the bar for the purposes of this case.

"Thank you.

"(The jury left the courtroom.)"[5]

The pattern of the verdict plainly suggested that the guilt or innocence of a particular defendant was determined by whether the mailing involved was by or on behalf of an association or associations assertedly domi-

[5] Transcript of Proceedings in the United States District Court for the Eastern District of Virginia, Vol. 25, p. 4030 (December 12, 1963). A copy of this transcript is on file with the Clerk of this Court.

nated and controlled by one or the other of the defendants. The logic of this determination by the jury is consistent with the charge contained in paragraph 2-t of the indictment that SFIC was organized and used "in order to attract the investment of funds by the investing public to savings and loan associations organized, dominated and controlled by the defendants." Thus, it was apparent that petitioner was convicted where the jury believed that a mailing was made by or on behalf of an association assertedly dominated and controlled by him (Counts Three and Eight), but was acquitted where he was not shown to have had any connection with a particular association by or on whose behalf a mailing was made (Counts Four, Five, Six, Seven and Nine). But the Prudential Savings & Loan Association on whose behalf the Count Eight letter was written (the *Baltimore* association) was *not* the Prudential Savings & Loan Association assertedly dominated and controlled by petitioner (the *Idaho* association).

Bearing in mind the District Court's admonition against interviewing the jurors, petitioner, within two days of the verdict, by written motion, sought permission to interview a representative number of jurors (in conjunction with the United States Attorney) to determine whether his conviction in fact rested upon the mistaken premise that he was connected with Prudential of Baltimore, and thereafter, depending upon the results, to seek appropriate relief from the District Court. The motion was denied and the Court of Appeals affirmed the denial, saying:

> "Grow's contention that the verdict against him on Count 8 was based upon a clear mistake of fact *assumes* [emphasis in original] that the jury in-

tended to convict only as to mailings shown to be related to associations controlled by the defendants. *This assumption, however, is pure speculation.* Neither under the Court's charge, nor under the law of mail fraud as applied to the facts in this case, would the jury be required to find the defendants guilty on only those counts involving associations which they controlled. In order to find Grow guilty on Count 8 it was not necessary that the jury find that Grow controlled either Commercial or Prudential. *To speculate that the jury did so find is to speculate as to the jury's reasoning which is unwarranted as a method of impeachment of the verdict.* In Butler v. United States 317 F.2d 249 at 262 (8 Cir. 1963), it was stated that '[A] juror's testimony revealing the reasons that in fact induced him or other members of the jury to arrive at their verdict cannot be admitted as impeachment testimony.' *The thrust of Grow's contention is that his conviction on Count 8 cannot stand because it is inconsistent with the jury's disposition of other counts.* However, consistency in the verdict is not necessary. [Footnote omitted.]" (Emphasis added.)[6]

Counsel has adhered to the District Court's admonition against interviewing the jurors but has urged as error, both in the Court of Appeals and in this Court, his being foreclosed from even *attempting* to learn whether petitioner's conviction on Count Eight was occasioned by a mistake of fact. Petitioner has never argued, as apparently suggested by the Court of Appeals,[7] that his conviction on Count Eight should be reversed outright by reason of the apparent mistake. Rather, he has sought only to be permitted to interview

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[6] *United States* v. *Grow, supra* note 1, at 207-208.

[7] *United States* v. *Grow, supra* note 1, at 208.

the jurors and then, *depending upon what he discovers, to seek appropriate relief (if he should decide to seek any relief at all) from the District Court.* If petitioner should find that the true verdict of the jury was that he was guilty on Count Eight *only if* he dominated and controlled Prudential Savings & Loan Association of *Baltimore,* he would, of course, then seek a judgment of acquittal in the District Court.

Subsequent to the filing of the petition for a writ of certiorari in this case and unbeknownst to counsel for petitioner, Mr. John Elwood Dennett of Salt Lake City, Utah, took an academic interest in the question of whether petitioner had in fact been convicted on Count Eight as a result of a mistake of fact. Mr. Dennett, heretofore a stranger to counsel for petitioner, then advised counsel for petitioner that he intended to seek out the jurors and question them concerning petitioner's conviction on Count Eight. Counsel for petitioner explicitly and emphatically advised Mr. Dennett that he (counsel) was under an injunction by the District Court which absolutely prohibited him from approaching the jurors in any fashion whatsoever and that he could not condone Mr. Dennett's proposed interrogation of jurors.

Mr. Dennett did, however, proceed with his avowed intention to question jurors and he secured the statements of the jurors which are attached as an Appendix to this motion. These statements are submitted as clearly indicating that petitioner was convicted, as the verdict plainly suggested and as petitioner suspected, by reason of the manifest mistake of fact that he dominated and controlled Prudential Savings & Loan Association of *Baltimore.* These statements further provide a sound predicate for requiring a hearing in the

District Court in which the jurors may be queried as to their true verdict reached in the jury room.[8] Petitioner represents that the purpose of the requested inquiry will be to determine whether the *true* verdict of the jury was *that petitioner was not guilty of mail fraud, alleged in the several counts of the indictment, if, as to any particular count, he was not alleged to have dominated and controlled the association or associations which did the mailing (or on whose behalf the mailing was made) alleged in that particular count.*[9] The purpose of questioning the jurors at the requested hearing *will not be to determine by what process of reasoning they arrived at their verdict,* i.e., presumably (at least for now) that petitioner was guilty only where there was a mailing by or on behalf of an association or associations allegedly dominated and controlled by him.

ARGUMENT

The statements of the jurors attached in the Appendix to this motion unmistakably indicate that the true verdict reached by the jury in the jury room was that petitioner was guilty on those counts which the evidence tended to show involved a mailing (of advertising matter concerning SFIC) by or on behalf of an

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[8] Counsel for the government have been advised that petitioner intended to bring the results of Mr. Dennett's inquiry to the attention of this Court.

[9] As previously noted, concerning Count Eight, it was neither alleged nor shown that petitioner had any connection with, much less that he dominated and controlled, either Prudential Savings & Loan Association of Baltimore or Commercial Savings & Loan Association of Baltimore. In fact, the indictment does not even mention Prudential Savings & Loan Association of Baltimore. That association is mentioned only in the Count Eight letters, which were received in evidence at trial (Exhibits 51 and 53). *See* note 4, *supra.*

association or associations allegedly dominated and controlled by him. Where the evidence showed no connection between petitioner and a given association, he was acquitted. Applying this indicated verdict to Count Eight, it must be *necessarily* concluded that petitioner was not *truly* convicted on this count, because he had no connection whatsoever with either Prudential Savings & Loan Association of Baltimore or Commercial Savings & Loan Association of Baltimore. It must be further *necessarily* concluded that the ostensible verdict of petitioner's guilt as to Count Eight was returned in the courtroom *only because* the jury mistakenly connected petitioner with Prudential Savings & Loan Association of Baltimore.

At the hearing requested in this motion, petitioner seeks only the opportunity to establish what is plainly indicated by the attached statements, i.e., that he was convicted by mistake. The late and fortuitous, yet dramatic, availability of proof supporting petitioner's contention should not be denied him. As this Court said many years ago:

> "The first branch of the second point presents the question of whether the affidavit of jurors impeaching their verdict ought to be received. It would perhaps hardly be safe to lay down any general rule upon this subject. Unquestionably such evidence ought always to be received with great caution, but *cases might arise in which it would be impossible to refuse them without violating the plainest principles of justice.*" (Emphasis added).[10]

It cannot be seriously contended that the plainest principles of justice would not be violated if this newly dis-

[10] *United States* v. *Reid*, 53 U.S. (12 How.) 361, 366 (1851).

covered evidence of petitioner's conviction-by-mistake is disregarded.

The relief here requested by petitioner—that he be permitted to demonstrate the *true* verdict of the jury—comports fully with the decisions of other courts:

> "Where the jury's error is patent on the face of the verdict, the court should so amend the verdict as to make it conform to correct legal principles. *But where the mistake is latent in and not apparent on the face of the verdict, it is sometimes proper to receive the affidavits of the jurors to ascertain their true verdict.* Although great caution should be exercised in the use of such affidavits, *there is no inflexible rule against their use, especially when they are offered, not for impeachment of the verdict, but rather for ascertainment of the true verdict.*" (Emphasis added.)[11]

> "The rule . . . excluding testimony or affidavits of jurors to impeach the verdict for misconduct of members of the jury occurring within the jury room and in connection with the deliberations of the jury *does not prevent the reception of evidence of jurors to show that through mistake, the real verdict on which agreement was reached in the jury room was not correctly expressed in the verdict returned into open court.* Jurors cannot be heard to testify that while the substance of the verdict returned into court was understood, it was predicated upon a mistake of the testimony, a misrepresentation of the law, unsound reasons, or improper motives. *But jurors are competent witnesses for the purpose of showing that through oversight, inadvertence, or mistake respecting the substance of the verdict returned into court, is* [*sic*] *was not the verdict on which agreement was actu-*

[11] *Freid* v. *McGrath*, 135 F. 2d 833, 834 (D.C. Cir. 1943); *see also Mattox* v. *United States*, 146 U.S. 140 (1892).

ally reached in the jury room. [Citations omitted]" (Emphasis added.)[12]

Furthermore, well reasoned authority supports the proposition that affidavits or testimony of jurors concerning their verdict should be *admissible* and that the proper test concerning such *admitted* affidavits or testimony is whether it is *sufficient* to warrant the impeachment of the verdict (or to correct the verdict so as to conform it to the verdict actually agreed upon). Judge Learned Hand said this:

> "There remains the only question on the appeal which has any substance: the order denying a new trial because of the supposed misconduct of the jury. Such an order, though discretionary, is indeed at times appealable, [footnote omitted] although the occasions are extremely rare. [Footnote omitted.] *The whole subject has been obscured, apparently beyond hope of clarification, by Lord Mansfield's often quoted language in Vaise* v. *Delaval,* [footnote omitted] *that no evidence of misconduct was competent which came from the jurors themselves, although, as judges have repeatedly pointed out, it is impossible to see from what source better evidence could be obtained.* [Footnote omitted.] On the other hand, it would be impracticable to impose the counsel of absolute perfection that no verdict shall stand, unless every juror has been entirely without bias, and has based his vote only upon evidence he has heard in court. It is doubtful whether more than one in a hundred verdicts would stand such a test; and although absolute justice may require as much, the impossibility of achieving it has induced judges to take a middle course, for they have recognized that the institution could not otherwise survive; they would

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[12] *Young* v. *United States,* 163 F. 2d 187, 189 (10th Cir.), *cert. denied,* 332 U.S. 770 (1947).

become Penelopes, forever engaged in unravelling the webs they wove. Like much else in human affairs, its defects are so deeply enmeshed in the system that wholly to disentangle them would quite kill it. The discussion of Lamar, J., in McDonald v. Pless, supra, [footnote omitted] well states the necessary compromise and that of Cardozo, J., in Clark v. United States, [footnote omitted] is akin, although the point decided was different.

"*All this has, however, nothing to do with what evidence shall be competent to prove the facts when the facts do require the verdict to be set aside, as concededly some facts do. The two decisions of the Supreme Court which we have cited, as well as its approach in United States v. Reid* [*footnote omitted*] *and Hyde v. United States,* [*footnote omitted*] *suggest it as not improbable that when the question arises in the future, the testimony of the jurors may be held competent, and that we shall no longer hear that they may not 'impeach their verdict,' when it is 'impeachable' if what they say is true.* Maybe not; judges again and again repeat the consecrated rubric which has so confused the subject; it offers an easy escape from embarrassing choices. *In the case at bar at any rate we shall not dispose of the appeal in that way; we shall accept what the affidavits said, as did the judge, and like him we shall decide whether it requires the relief asked.*" (Emphasis added.)[13]

The Court of Appeals' objection that petitioner's apprehension that he had been convicted by mistake was bottomed on nothing but speculation has now been overcome and replaced by the attached statements of jurors. There is now a substantial basis for ordering a hearing for the purpose of determining whether or

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[13] *Jorgensen* v. *York Ice Mach. Corp.*, 160 F. 2d 432, 435 (2d Cir. 1947); *accord, Klimes* v. *United States*, 263 F. 2d 273 (D.C. Cir. 1959); *see* 8 WIGMORE, EVIDENCE §§ 2352-2355 McNaughton rev. 1961).

not the true verdict on Count Eight, as it pertains to petitioner, was for acquittal.

CONCLUSION

Considering the foregoing facts and argument, this Court should grant certiorari, retain jurisdiction and remand the case for a hearing upon the question of whether petitioner was convicted as the result of a mistake of fact.

Respectfully submitted,

/s/ EDWARD P. MORGAN
Edward P. Morgan

/s/ THOMAS M. P. CHRISTENSEN
Thomas M. P. Christensen
300 Farragut Building
900 Seventeenth Street, N.W.
Washington, D. C. 20006
Attorneys for Petitioner

APPENDIX

APPENDIX

APPENDIX (1)

September 15, 1968

In the year 1963, I was chosen as the 12th juror in a case that involved Mr. Mensik[,] Mr. Grow & Mr. McGurin [sic] & the United States Government.

This was my first experience as a juror.

The case lasted some weeks, many witnesses were introduced and I found it helpful in trying to remember the witnesses & details to jot down notes in the evening.

At the close of the trial & after instructions from the judge[,] we retired to the jury room.

I believed that I had listened well & was familiar with the evidence.

A copy of the indictment & the counts against the defendant was available to the jury. I thought that it would be helpful to the members of the jury to positively identify each count with the defendant who was directly associated with that particular company or institution.

I then took the copy & using a pen or pencil[,] I marked on the copy the initial of the man who was so associated. (M[Mensik], G[Grow][,] C[Culver])

After hours of deliberations[,] the jury, using these initial marks as positive identifications[,] found the defendants guilty.

. . . Shortly after the trial ended, I believe the next morning . . . I read in the paper where Mr. Morgan [counsel for petitioner Grow] said that he believed that the jury was mistaken & would ask for a new trial on that basis.

I then realized that I had erronously [sic] marked the indictment & had misled the jury.

About one or two days later[,] as the error bothered me, I called Judge . . . [name unintelligible] & asked him, with-

out discussing the case, what I should do. He suggested that I write to Judge Thomson [sic]. I wrote to Judge Thompson [sic], but never mailed the letter. My wife thought that I was taking the whole thing too seriously & suggested that the trial was over & I should not mail the letter.

I also talked with attorney L. Paul Byrne about the matter.

ANDREW R. CAMPBELL

Witness: . . . [name unintelligible]

APPENDIX (2).

STATEMENT

I, Lawrence A. Vaden, served as a juror in Criminal case 7412 which was tried in Richmond[,] Virginia before Judge Thomsen back in 1963. Mr. Grow, Mr. McGurren and Mr. Mensik were the defednats [sic]. They were tried on the accusation of the Government that they had mailed brochures through the mail which contained some false information about some insurance for depositors.

Some of the companies which mailed the brochures were controlled by Mr. Grow; some were controlled by Mr. Mensik and some were controlled by a Mr. McGurren or a Mr. Culver.

The evidence was very long and very confusing. It was hard to remember all of the details. The jury had a very difficult time reaching a verdict because it was hard to remember all of the dtails [sic]. We even had a hard time remembering which of the defendants . . . were associated with which companies.

Mr. Campbell, one of the jurors, seemed to remember the associations better than the other jurors. He and one

other jurors [sic] had made notes at night after each day of evidence. After we took a first vote and were unable to reach any definite conclusion, or a unanimous verdict, he sent out or somehow obtained a copy of the indictment.

He then took some kind of writing instrument and marked some sort of symbol to the side of the companies which did the mailing. He marked First Fidelity Savings and Loan with a "G" which stood for "Grow". He marked Commercial Savings and Loan with A [sic] "M" for Mensik. The others, were marked with a "C" for Culber [sic].

He seemed to remember that Mr. Grown [sic] was associated with Prudential Savings and Loan. He marked this also with a "G". This marking was based upon Mr. Campbells [sic] memory that Mr. Grow was the controlling person in Prudential.

We had a lot of grouble [sic] reaching . . . a [verdict] even after that, but finally compromised on the basis that the person who was associated with the company he controlled which did the mailing of the brochures should be convicted and the persons who were not affiliated with the companies should be acquitted.

We convicted Mr. Grow because of his affiliation with First Fidelity and Prudential. We convicted Mr. . . . Mensik because of his affiliation with Commercial. We acquitted Mr. Grow on the Commercial mailing because he had nothing to do with Commercial. We acquitted Mr. Mensik because he had nothing to do with First Fidelity (on those counts involving First Fidelity). We acquitted both Grow and Mensik on those counts dealing with the mailings of Mr. Culver's companies.

. . . I have now read Mr. Campbell's statement that he was confused on the Prudential Item, and I think he is right. We relied completely on Mr. Campbell's memory when he said that Mr. Grow was the controlling person on Prudential. As it seems to turn out, Mr. Grow did control

Prudential Savings & Loan in Burley [should read Boise (Idaho)] but did not control Prudential Savings & Loan in Baltimore. The Baltimore Prudential did send out the mailers, but the Burley [should read Boise (Idaho)] Prudential did not. Accordingly, *if* it is true that Grow had nothing to do with Prudential of Baltimore, our verdict on this count (Count #8) was erroneous, and I am compelled by a desire to tell the truth that I should make this clarifying statement. *If* however, Grow did control Prudential Savings of Baltimore, the verdict on Count #8 should stand.

LAWRENCE A. VADEN
Sept. 15—1968

Witness: Richard C. Vaden

APPENDIX (3)

STATEMENT

My name is Clarence Miller. I live at 1704 Stockton Street[,] Richmond, Virginia. I served as one of 12 jurors in the case brought by the United States against D. Spencer Grow, C. Oran Mensik and Henry McGurren[,] which was tried in October & November 1963, in Richmond[,] Virginia. In each of the Counts, we convicted the defendants in those instances where the defendant was the dominant person in the company which had the folders mailed and acquitted where the person had no affialiation [sic]. While it has been a long time now, and I cannot exactly remember the evidence and the reasons for our verdict in every detail, I am prepared to say that we probably convicted Mr. Grow in Count #8 on the assumption that he was the dominant person in Prudential Savings & Loan of Baltimore[,] Maryland & that if he was not the dominant person in Prudentential [sic] of Baltimore[,]

Maryland, we probably would not have convicted him on Count #8. While I cannot say without some doubt & equivocation, because my memory is dim, I believe that we might have been and probably were confused by the fact that Prudential Savings and Loan of Burly [should read Boise] Idaho had about the same name as Prudential Savings & Loan of Baltimore. If it turns out that Mr. Grow has nothing to do with Prudential Savings & Loan of Baltimore, a fact I cannot judge, he would probably have been acquitted on my vote on that one count (#8).

CLARENCE MILLER

Witness: Esther R. Miller